

REMARKS

Status of the Claims

Claims 1, 4, 44, 46 and 59-62 are allowed. Claims 43, 75 and 89 are objected to as being dependent on a rejected base claim. Claims 3, 5-6, 8-12, 16-35, 37-42, 45, 47-58, 63-68, 70, 72-74, 76-79, 81-88 and 90 are cancelled. Claims 2, 7, 13-15, 36, 43, 69, 71, 75, 80 and 89 remain at issue and are now believed to be in condition for allowance.

Claim Rejection under 35 USC § 112

Claims 2, 5, 7, 13-15, and 17 stand rejected under 35 USC § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 is rejected on the basis that the element “means operatively associated with the frame for limiting the ventricle to a select end diastolic internal diameter” is unclear. Applicant states that this means is depicted in Fig. 7 and comprises the flexible cables 81, 82 terminated with the loops 83 and knots 88 that are firmly retained against the member 30, 32 and 31, 33, respectively. As set forth in the Specification at page 13, lines 10-15: “Optional flexible cables 81, 82 serve to restrict the maximum diameter of the device, and hence limit the end diastolic diameter of the heart.” Accordingly, reconsideration and withdrawal of the rejection of claim 2 are respectfully requested.

Claims 5 and 17 are cancelled, rendering the grounds of rejection of these claims moot.

Claims 7 and 13-15 are now dependent on claim 44. Applicant respectfully submits making these claims dependent on claim 44 overcomes the rejection under 35 USC § 112.

Objected to claims

Claims 43, 75 and 89 are objected to as being dependent on a rejected base claim. Claims 43, 75 and 89 have been rewritten in independent from incorporating all of the limitations of the rejected base claim and are now believed to be in condition for allowance. Claim 36 has been amended to be dependent from now independent claim 43 and is therefore believed to be allowable. Claims 69 and 71 have been amended to be dependent on claim 75. Accordingly, claims 69 and 71 are now believed to be in condition for allowance. Claim 80 has been amended

to be dependent from claim 89. Because claim 89 is believed to be in condition for allowance, claim 80 is believed to be in condition for allowance as well.

Conclusion

For the foregoing reason, applicant respectfully submits claims 1, 2, 4, 7, 13-15, 36, 43-44, 46, 59-62, 69, 71, 75, 80 and 89 are now in condition for allowance. Accordingly, issuance of a Notice of Allowance directed to these claims is respectfully requested. If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefor to deposit account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to deposit account No. 19-5117.

Respectfully submitted,

/TD Bratschun/

Date: 3/5/10

Thomas D. Bratschun, #32,966
Swanson & Bratschun, L.L.C.
8210 Southpark Terrace
Littleton, CO 80120
Telephone: (303) 268-0066
Facsimile: (303) 268-0065